

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT  
701 COMMERCE STREET  
DALLAS, TEXAS 75202

ARTHUR M. ALBIN  
General Attorney

214-651-6742

In reply refer to: 410.043-93

14210  
RECORDATION NO. .... FILED 14210

December 5, 1983

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
12th and Constitution Ave., N.W. INTERSTATE COMMERCE COMMISSION  
Washington, D.C. 20423

DEC 7 1983 - 11 00 AM

Re: Locomotive Lease Agreement dated October 17, 1983,  
between Ben Maushardt and David A. Summers, as Trustees  
under a Trust Agreement dated as of August 15, 1968,  
Lessor, and Missouri-Kansas-Texas Railroad Company,  
Lessee, covering Eight General Motors GP-40 Diesel  
Electric Locomotives.

3-341A070  
DEC 7 1983  
Fee \$ 50.00  
ICC Washington, D.C.  
Dear Mrs. Mergenovich:

I have enclosed an original and three (3) counterparts of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document, a Locomotive Lease Agreement, a primary document, is dated the 17th day of October, 1983.

The names and addresses of the parties to the document are as follows:

Lessor: Ben Maushardt and David A. Summers,  
Trustees under P.C. Trust No. 10  
c/o United States Rail Services, Inc.  
633 Battery Street  
San Francisco, CA 94111

Lessee: Missouri-Kansas-Texas Railroad Company  
701 Commerce Street  
Dallas, TX 75202

A description of the equipment covered by the document follows:

Eight General Motors (Electro Motive Division) GP-40, 3,000 H.P.  
Diesel Electric Locomotives, current Conrail Locomotive Nos. 3105  
3112, inclusive.

A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the undersigned, or the bearer of this letter if hand delivered, for distribution to the parties.

RECEIVED  
DEC 7 10 55 AM '83  
FEE OPERATION BR.  
I.C.C.

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**  
**LAW DEPARTMENT**

Mrs. Agatha L. Mergenovich

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December 5, 1983

A short summary of the document to appear in the Index follows:

Locomotive Lease Agreement dated October 17, 1983, covering eight General Motors GP-40, 3,000 HP Diesel Electric Locomotives, currently bearing Conrail Locomotive Numbers 3105-3112, inclusive, by and between Ben Maushardt and David A. Summers, Trustees, and Missouri-Kansas-Texas Railroad Company.

I certify that I have knowledge of the foregoing.

Yours very truly,



Arthur M. Albin  
General Attorney

AMA:vas  
Enclosures

**Interstate Commerce Commission**

**Washington, D.C. 20423**

OFFICE OF THE SECRETARY

**12/9/83**

**Arthur M. Albin  
Missouri-Kansas-Texas RR. Co.  
701 Commerce Street  
Dallas, Texas 75202**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **12/7/83** at **11:00am** and assigned recordation number(s). **14210**

Sincerely yours,

  
JAMES H. BAYNE

Secretary

Enclosure(s)

14210  
RECORDATION NO. 14210 Filed 1225  
DEC 7 1983 -11 00 AM

## INTERSTATE COMMERCE COMMISSION LOCOMOTIVE LEASE AGREEMENT

THIS AGREEMENT made this 17th day of October, 1983, by and between Ben Maushardt and David A. Summers (successor trustee to D.W. Pattersen), not in their individual capacities but solely as Trustees under a Trust Agreement, dated as of August 15, 1968, as amended (hereinafter called the "Lessor"), and Missouri-Kansas-Texas Railroad Company (hereinafter called the "Lessee").

## LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lessee agrees to lease from Lessor the locomotives in Exhibit A (the "Locomotives"). All Locomotives presently bear Conrail reporting marks. The Conrail name and/or logo will be lined out with paint prior to delivery. The Lessee may stencil its name on the units so long as it removes same should Lessee not elect to extend the lease of the Locomotives pursuant to Section 10 hereof. The Lessor shall deliver the units free of charge to a Conrail interchange point designated by Lessee.

2. The Lease shall commence with respect to each Locomotive when said Locomotive is interchanged by Conrail to the connecting carrier designated by Lessee ("Delivery"), and Lessee has accepted same in accordance with Section 4. Rent will commence hereunder 25 days after Delivery of the last Locomotive, which date is herein called the "Rent Commencement Date". To the extent that all Locomotives are not delivered by December 15, 1983, the Rent Commencement Date on those Locomotives

delivered by December 15, 1983 will be 25 days after December 15, 1983. Neither Lessor or Lessee are obligated to proceed with this Lease on Locomotives not delivered by December 15, 1983. The expiration date of this Lease, unless the provisions of Section 10 are invoked, shall be 180 days after the Rent Commencement Date. The daily rental shall be \$110.00 per day per Locomotive, payable monthly in advance. Pursuant to the repairs specified in Section 4, the Lessee shall be entitled to a rental credit for all Locomotives for the first 21 days and the last 21 days during which rental is due. See example on Exhibit A.

3. Lessee agrees it will take delivery of the Locomotives and has agreed to lease the Locomotives from Lessor, As-is, at point of delivery, with all faults and Lessor makes no warranty or representation, either expressed or implied, as to fitness in general or for any purpose, merchantability, design, condition or as to the quality of the material, equipment or workmanship in Locomotives or as to any features thereof or as to any matter whatever, similar or dissimilar to the foregoing. Lessee understands that, except as expressly set forth herein, all costs and expenses in any way related to the use, maintenance and operation of the Locomotives is for the account of the Lessee.

4. Lessee shall accept the units at time of delivery as specified in Section 2 so long as they are in the same condition as at the initial inspection by Lessee's representative, but not

otherwise. Any damage in transit on Conrail shall be the responsibility of Lessor. Lessee, in consideration of the rental credits set forth in Section 2, agrees, that regardless of the cost, Lessee will make the specific repairs or renovations noted on Exhibit A completing the same prior to redelivery of the Locomotives to Lessor under any provision of this Lease and to industry standards as to parts, material and workmanship.

5. Lessee shall direct payment of the monthly rent and notices pursuant to Section 14(b) to the following address:

Trustees under P.C. Trust No. 10  
c/o United States Rail Services, Inc.  
633 Battery Street  
San Francisco, California 94111  
Attention: David A. Summers  
President

6. Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee.

7. Lessee agrees it will be solely responsible for any loss, damage or destruction of any Locomotive leased to it by Lessor after delivery and while subject to this Lease. In case any of the Locomotives during the term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor the sum of \$120,000 per Locomotive within thirty (30) days of the event. Lessee shall, in addition, procure liability insurance providing limits of at least \$5 million per occurrence and name Lessor as additional insured thereunder, subject to a deductible of \$750,000 per occurrence or such other lesser deductibles as are customary in the industry. Lessee shall, as promptly as practical after the date hereof, but before Delivery of the first Locomotive, provide Lessor satisfactory evidence of such insurance.

8. Lessee agrees to indemnify, defend and save harmless Lessor against any charge or claim made against Lessor and against any expense or liability which Lessor may incur as a result of the use, condition or operation of any Locomotive after delivery and while subject to this Lease and to indemnify, defend and save harmless Lessor against any claim or suit on account of any accident in connection with the use or operation of any Locomotive resulting in damage to property, including property of Lessor, or injury to any person.

9. Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain and keep the Locomotives in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

10. At any time, but no later than March 26, 1984, Lessee shall have the right to extend the term of this Lease beyond the initial six month term for all, but not less than all, of the Locomotives covered by this Lease by giving written or telegraphic notice to Lessor. The monthly lease payments shall be \$1,673.00 per month per Locomotive, in advance, payable within four (4) days following the expiration of the initial six month lease term, and on the same day of each month thereafter, and will continue for a term of one hundred eight (108) months. At the expiration of the 108 month term, the Lessee may purchase all Locomotives for \$1.00 per Locomotive. At request of Lessee, Lessor shall execute and deliver a bill of sale for said Locomotives, warranting to the best of Lessor's knowledge good title thereto in favor of Lessee, when all payments have been received. Prior to March 26, 1984,



Lessor shall provide satisfactory evidence of legal ownership and to the Locomotives and that Lessor will be able to convey good and merchantable title thereto upon expiration of said 108 month term.

11. In the event that Lessee elects to exercise the long-term lease option set forth in Section 10, and in the further event that any Locomotive during such extended lease term shall become lost, destroyed or damaged beyond economic repair, in the fair opinion of Lessee, from any cause whatsoever, rental with respect to said unit shall terminate upon receipt by Lessor of the casualty payment specified in Exhibit B.

12. In the event the Lessee does not elect to extend the term of this Lease of the Locomotives pursuant to Section 10, upon expiration of the initial lease term, the Lessee agrees to provide storage at no expense or risk to the Lessor for a period of one hundred twenty (120) days pursuant to manufacturer's recommended storage procedures. Lessee will also move the Locomotive(s) to any point on Lessee's tracks (to include trackage rights) free of charge for the purpose of returning Locomotives to Lessor. The Locomotives shall be returned to Lessor in operating condition, as specified in Section 9, normal wear and tear excepted, fit for the service they were intended.

13. Lessee shall not assign or sublet its interest, or any part thereof, under this agreement, or permit the use of operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other than Lessee under standard run-through and power

pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice is given of such assignation in accordance with Section 14.

14. Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

Missouri-Kansas-Texas Railroad Company

701 Commerce Street

Dallas, Texas 75202

Attention: Karl R. Ziebarth

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

Trustee under P.C. Trust No. 10

c/o United States Rail Services, Inc.

633 Battery Street

San Francisco, California 94111

Attention: David A. Summers

President

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

15. In the event the Lessee exercises its option pursuant to Section 10 hereof, all of the terms and provisions hereof, except those specifically applying to the six month term only, such as the rental payment date described in Section 2 and the casualty value described in the second sentence of Section 7, shall continue in full force and effect during the extended term. Lessor may proffer and substitute a new lease agreement if Section 10 is exercised, embodying the aforesaid terms and conditions, as set forth in this agreement, and such other mutually acceptable conditions as are customary in long-term financing.

16. So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

17. The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Agreement and bind the respective parties to the terms and provisions hereof. Lessor will pay all commissions and fees to any broker, agent, or dealer who may have been retained in connection with this transaction, and will hold Lessee harmless for any such fees or commissions.

18. Lessee will promptly cause this Lease to be duly filed,

registered or recorded in conformity with Section 11303 of the Interstate Commerce Act or other places within or without the United States as Lessor may reasonably request for the protection of its title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filings.

Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Sections 2, 7 and 11, hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement this 18 day of November, 1983.

BEN MAUSHARDT AND DAVID A. SUMMERS,  
AS TRUSTEES UNDER P.C. TRUST NO. 10

By Ben Maushardt  
Trustee

By David A. Summers  
Trustee

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By David A. Summers  
Title Executive Vice President-Financial

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

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) SS  
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On this 21<sup>st</sup> day of November, 1983, before me personally appeared BEN MAUSHARDT, to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

(Notarial Seal)

Nancy C. I. Chapman  
Notary Public

My commission expires: August 15, 1987

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

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) SS  
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On this 21<sup>st</sup> day of November, 1983, before me personally appeared DAVID A. SUMMERS, to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

(Notarial Seal)

Nancy C. I. Chapman  
Notary Public

My commission expires: August 15, 1987

STATE OF

COUNTY OF

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) SS  
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On this 18<sup>th</sup> day of November, 1983 before me personally appeared KARL ZIEBARTH, to me personally known, who being by me duly sworn, says that he is the Executive Vice President-Financial of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

Ruth Murdoch  
Notary Public

My commission expires: 12-31-84

EXHIBIT A

Locomotive Description: General Motors (Electro Motive Division) GP-40, 3,000 H.P. Diesel Electric Locomotives, Current Conrail Locomotive Numbers 3105-3112, inclusive.

Repair Work: It has been represented that units 3105 and 3108 in particular need extensive repairs. In consideration of the rental credits being granted, the MKT agrees to repair these units as necessary to use them in the service of the MKT which may include such items as changeout of some power assemblies.

Rent Example: For example, if Delivery of the last Locomotive were made on November 21, 1983, the Rent Commencement Date would be December 16, 1983; rent would be payable as follows: December 16, 1983, 10 days rent or \$8,800 (because December has 31 days), January 16, 1984, 31 days rent or \$27,280, February 16, 1984, 29 days rent or \$25,520, March 16, 1984, 31 days rent or \$27,280, April 16, 1984, 30 days rent or \$26,400, May 16, 1984, 7 days rent or \$6,160 and this Lease would terminate June 12, 1984.

**EXHIBIT B**  
**Casualty Schedule**

<u>Mo. #</u>	<u>Casualty Value</u>	<u>Mo. #</u>	<u>Casualty Value</u>	<u>Mo. #</u>	<u>Casualty Value</u>	<u>Mo. #</u>	<u>Casualt Value</u>
1	120,000	28	99219.90	55	73629.26	82	41639.95
2	120,000	29	98370.43	56	72567.38	83	40312.56
3	118327.00	30	97513.90	57	71496.69	84	38974.10
4	117636.11	31	96650.27	58	70417.11	85	37624.64
5	116939.49	32	95779.47	59	69328.57	86	36263.92
6	116237.09	33	94901.46	60	68231.00	87	34891.91
7	115528.86	34	94016.12	61	67124.32	88	33508.51
8	114814.75	35	93123.45	62	66008.45	89	32113.63
9	114094.71	36	92223.37	63	64883.32	90	30707.17
10	113369.70	37	91315.82	64	63748.85	91	29289.04
11	112636.66	38	90400.74	65	62604.97	92	27859.14
12	111898.54	39	89478.07	66	61451.59	93	26417.37
13	111154.30	40	88547.74	67	60288.64	94	24963.63
14	110403.90	41	87609.69	68	59116.04	95	23497.83
15	109647.23	42	86663.85	69	57933.70	96	22019.81
16	108894.30	43	85710.16	70	56741.51	97	20529.62
17	108115.04	44	84748.55	71	55539.50	98	19027.01
18	107339.39	45	83778.96	72	54327.48	99	17511.94
19	106557.31	46	82801.33	73	53105.40	100	15984.29
20	105768.74	47	81815.58	74	51873.17	101	14443.96
21	104973.62	48	80821.65	75	50630.72	102	12890.84
22	104171.90	49	79819.47	76	49377.95	103	11324.83
23	103363.53	50	78808.97	77	48114.79	104	9745.83
24	102548.45	51	77790.08	78	46841.14	105	8153.72
25	101726.60	52	76762.74	79	45556.92	106	6548.40
26	100897.93	53	75726.87	80	44262.04	107	4929.75
27	100062.39	54	74682.40	81	42956.41	108	3297.67